

GRAHAM & GRAHAM, P.C.
ATTORNEYS AT LAW
EXCHANGE HALL • 6 SCHOOL STREET
ACTON, MA 01720

12/17/ (5a)

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December 12, 2012

VIA EMAIL TO:
cjoyce@acton-ma.gov

Board of Selectmen
Town of Acton
472 Main Street
Acton, MA 01720

Re: Release of Community Preservation Act (CPA) Funds - Exchange Hall

Ladies and Gentlemen:

This office represents Exchange Hall, LLC.

On April 7, 2008, Town Meeting approved the grant of Community Preservation Act funds to Blue Bird Realty Trust ("Bluebird") for the restoration of the Exchange Hall at 2 School Street, subject to terms and conditions set forth in the 2008 Annual Town Meeting Warrant (the "2008 Town Meeting Vote"). On June 2, 2008, the Town's Community Preservation Committee ("CPC") awarded a grant of Community Preservation Act funds in the amount of \$231,948 (the "CPA Funds") to Bluebird.

On or about November 19, 2010, Bluebird transferred title to the property located at 2 School Street, Acton, Massachusetts ("the Exchange Hall") to Exchange Hall, LLC ("Exchange Hall") and assigned to Exchange Hall all of its right, title and interest in the CPA Funds, subject to Exchange Hall satisfying the conditions of the CPA award and the 2008 Town Meeting Vote.

Exchange Hall has, in all material respects, preformed the restoration to the Exchange Hall contemplated in the CPC award and the 2008 Town Meeting Vote, exclusive of the installation of an elevator to serve the premises, which elevator is needed to afford the Town access to the Ballroom.

I have been before you before to request the release of a portion of the CPA Funds in order to undertake the installation of an elevator. It was the Board's position at the time of my request that the award and 2008 Town Meeting Vote required the completion of the work and access to the Ballroom by the Town.

My client has arranged financing for the installation of a limited use, limited application elevator ("LULA") which will meet the Town's requirements for access to the Ballroom so that it may be used for Town purposes.

As a condition of the award of the CPA funds and the 2008 Town Meeting Vote, Exchange Hall had been negotiating the terms of a Preservation Restriction Agreement between the Town and Exchange Hall ("PRA") to encumber the premises and to ensure its ongoing maintenance and preservation. The PRA has been submitted to the Massachusetts Historical Commission for its review and approval and we are in the final stages of obtaining that approval.

To enable my client to obtain the necessary financing for the installation of the LULA and to clarify the terms for the release of the CPA Funds, I have prepared an agreement between Exchange Hall and the Town relative to the remaining items necessary for the release of the CPA funds. A copy of the agreement entitled "Agreement Relative to the Release of Community Preservation Act (CPA) Funds" ("CPA Funds Agreement") has been provided to the Board by the Town Planner who has served as the liaison between my client and the Town.

Request is hereby made that the Board approve the CPA Funds Agreement and execute the CPA Funds Agreement at its meeting on Monday, December 17, 2012 so that my client may proceed with the installation of the LULA.

Very truly yours,

GRAHAM & GRAHAM, P.C.

A handwritten signature in black ink, appearing to read "St. R. Graham", followed by a horizontal line.

Steven R. Graham

SRG/jm
cc: Client

12/17 (5B)

Christine Joyce

From: Christine Joyce
Sent: Monday, December 03, 2012 11:26 AM
To: Roland Bartl; Steve Ledoux
Cc: Manager Department; 'David Wiener'; 'Steven Graham'
Subject: RE: Exchange Hall

Importance: High

Steve Graham has called and I have scheduled at the earliest time I could, however, it will be discussed at 9:00 p.m. on the 17th. He would like to wrap this up before the end of the year. He will be submitting materials to me for the Packet of the 17th before 12:30 on Wednesday before the meeting.

From: Roland Bartl
Sent: Friday, November 30, 2012 5:14 PM
To: Steve Ledoux
Cc: Manager Department; 'David Wiener'
Subject: FW: Exchange Hall

Hi, Steve:

With respect to an agreement regarding the prerequisite and conditions for releasing the CPA funds to the owner, could we a date & time for getting on the Board of Selectmen's agenda? Steve Graham, David Wiener and I have been working on it for the last few weeks or months and it is now ready for the Selectmen's consideration.

Thank you

Roland Bartl, AICP
Planning Director
Town of Acton
472 Main Street
Acton, MA 01720
978-929-6631

From: David Wiener [<mailto:dwien@andersonkreiger.com>]
Sent: Friday, November 30, 2012 11:49 AM
To: Roland Bartl
Cc: Stephen Anderson
Subject: RE: Exchange Hall

Roland:

Can you answer Steve on this? Or just let me know and I will get back to him. Thanks.

David

From: Steven Graham [<mailto:sgraham@graham-grahamlaw.com>]
Sent: Friday, November 30, 2012 6:48 AM
To: David Wiener
Cc: Roland Bartl (rbartl@acton-ma.gov); Stephen D. Anderson
Subject: RE: Exchange Hall

David,

The Agreement is acceptable to my client. Please advise the earliest date we can get this on the Selectmen's Agenda.

Steve

Steven R. Graham, Esq.
Graham & Graham, P.C.
6 School Street
Acton, MA 01720

Phone: 978-264-0695
Facsimile: 978-264-0517
E-mail: SGraham@graham-grahamlaw.com

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From: David Wiener [<mailto:dwiener@andersonkreiger.com>]
Sent: Thursday, November 29, 2012 12:43 PM
To: Steven Graham
Cc: Roland Bartl (rbartl@acton-ma.gov); Stephen D. Anderson
Subject: RE: Exchange Hall

Steve:

Attached are clean and redlined copies of the CPA funding agreement. The redlined copy is marked against my earlier draft, and remains subject to the Town's review and comment.

Please let me know if you have any further comments.

David

From: Steven Graham [<mailto:sgraham@graham-grahamlaw.com>]
Sent: Tuesday, November 27, 2012 8:53 AM
To: David Wiener
Subject: Re: Exchange Hall

Thank you.

Sent from my Verizon Wireless 4G LTE DROID

David Wiener <dwiener@andersonkreiger.com> wrote:

Hi Steve,

I will try to look at this today or tomorrow and get back to you. Thanks.

David

From: Steven Graham [<mailto:sgraham@graham-grahamlaw.com>]
Sent: Tuesday, November 27, 2012 7:55 AM
To: David Wiener

Cc: roland bartl (rbartl@acton-ma.gov); Glenn Berger (glenn@exchangehall.com)
Subject: Exchange Hall

Hi David,

Attached is the CPA Agreement you last sent to me with a few suggested changes.

My objective is to insure the release of funds does not get tied up if my client has improvements to make to the ballroom bathrooms, which he is obligated to do by the Building Code and AAB, but is otherwise able to legally provide access to the ballroom. Since there are handicap accessible bathrooms on the first floor, to which access will be available with the installation of the LULA, this should meet the requirements of the 2008 Town Meeting Vote.

My client informs me that this arrangement is acceptable to the AAB as work is progressing on the handicap accessible bathroom on the top floor.

I would like to complete this as soon as possible and would like to be on the Board of Selectmen's Agenda as early as possible in December.

Steve

Steven R. Graham, Esq.
Graham & Graham, P.C.
6 School Street
Acton, MA 01720

Phone: 978-264-0695
Facsimile: 978-264-0517
E-mail: SGraham@graham-grahamlaw.com

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Christine Joyce

12/17 (5C)

From: Roland Bartl
Sent: Thursday, December 06, 2012 6:28 PM
To: Christine Joyce
Cc: Manager Department; 'David Wiener'; 'Steven Graham'; Kristen Domurad-Guichard
Subject: FW: Exchange Hall
Attachments: Selectmen's Vote - Exchange Hall - CPA Funding Agreement (A0171516).DOC; CPA Agreement - Exchange Hall (A0168856-4).DOC.DOC

Hi, Christine:

Attached for consideration at the Board of Selectmen's 12/17 meeting are the agreement with Exchange Hall LLC and the accompanying record of vote regarding the release, and requisite conditions for release, of 2008 CPA funds for Exchange Hall rehabilitation work. David Wiener from Town Counsel and I have been working with Steve Graham, Exchange Hall's Counsel, on this document. David and I feel it is acceptable covering all the necessary conditions for the release of funds.

Therefore, I want to recommend this favorably for action.

Steve Graham will attend the 12/17 meeting on behalf of Exchange Hall and will provide additional materials in advance for the meeting package. I plan on attending for stand-by as needed. I understand this item is scheduled for 9:00 PM. Please advise Steve and me if there is any change in appointment time.

Thank you -

Roland Bartl, AICP
Planning Director
Town of Acton
472 Main Street
Acton, MA 01720
978-929-6631

From: David Wiener [<mailto:wiener@andersonkreiger.com>]
Sent: Thursday, December 06, 2012 6:06 PM
To: Roland Bartl
Cc: Stephen Anderson
Subject: Exchange Hall

Roland:

Attached is a proposed Vote of the Board of Selectmen for the December 17 meeting re: the CPA funding agreement. Please let me know if you have any questions or if I should forward it to Christine. Thanks.

David

David L. Wiener
ANDERSON & KREIGER LLP
One Canal Park, Suite 200
Cambridge, MA 02141
t: 617.621.6570
f: 617.621.6670

RECORD OF VOTE OF THE ACTON BOARD OF SELECTMEN
December 17, 2012

At a duly called public meeting of the Acton Board of Selectmen on December 17, 2012, the Board voted unanimously to enter into an Agreement Relative to the Release of Community Preservation Act (CPA) Funds between the Town of Acton and Exchange Hall, LLC (“Exchange Hall”) with respect to the conditions precedent to be satisfied by Exchange Hall prior to the release of Community Preservation Act funds to Exchange Hall in connection with the Town’s appropriation of a grant to Blue Bird Realty Trust, predecessor-in-interest to Exchange Hall, under the Community Preservation Act for the restoration of historic elements within and related to the building located at 2 School Street in Acton and commonly referred to as “Exchange Hall.”

TOWN OF ACTON
By its Board of Selectmen

Mike Gowing

Janet K. Adachi

Pamela Harting-Barrat

John Sonner

David Clough

AGREEMENT RELATIVE TO THE RELEASE OF
COMMUNITY PRESERVATION ACT (CPA) FUNDS

THIS AGREEMENT RELATIVE TO THE RELEASE OF COMMUNITY PRESERVATION ACT (CPA) FUNDS (this "Agreement") is made as of this ____ day of _____, 2012, by and between EXCHANGE HALL, LLC, a Massachusetts limited liability company, having an address of 2 School Street, Acton, Massachusetts 01720 ("Exchange Hall") and THE TOWN OF ACTON, a municipality of the Commonwealth of Massachusetts acting by and through its Board of Selectmen, having an address of 472 Main Street, Acton, Massachusetts 01720 (the "Town").

WHEREAS, on June 2, 2008, the Town's Community Preservation Committee (the "CPC") awarded a grant of Community Preservation Act funds in the amount of \$231,948.00 (the "CPA Funds") to Blue Bird Realty Trust ("Blue Bird"), predecessor in title to Exchange Hall, for certain renovations and improvements to the property located at 2 School Street, Acton, Massachusetts, commonly referred to as Exchange Hall (the "Premises"); and

WHEREAS, on April 7, 2008, Town Meeting approved the grant of the CPA Funds to Blue Bird subject to certain terms and conditions set forth in the 2008 Annual Town Meeting Warrant (the "2008 Town Meeting Vote"); and

WHEREAS, on or about November 19, 2010, Blue Bird assigned all of its right, title and interest in the CPA Funds to Exchange Hall; and

WHEREAS, as a condition to the grant of the CPA Funds, Exchange Hall and the Town have been negotiating the terms of a certain Preservation Restriction Agreement between the Town and Exchange Hall (the "PRA") to encumber the Premises; and

WHEREAS, the PRA has been submitted to the Massachusetts Historical Commission ("MHC") for its review and approval; and

WHEREAS, Exchange Hall has completed in all material respects the restoration work contemplated by such June 2, 2008 award letter from the CPC and the 2008 Town Meeting Vote, exclusive of the installation of an elevator to serve the Premises; and

WHEREAS, the Department of Public Safety of the Commonwealth of Massachusetts, through its Architectural Access Board (the "AAB"), has granted Exchange Hall a variance for the installation of limited use-limited application elevator ("LULA"), in lieu of a standard size elevator, as set forth in its decision dated June 4, 2012, a copy of which has been provided to the Town; and

WHEREAS, Exchange Hall and the Town wish to clearly set forth the terms under which the CPA Funds will be released to Exchange Hall.

NOW THEREFORE, in consideration of the foregoing premises, the covenants set forth hereinafter and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, it is agreed between Exchange Hall and the Town as follows:

1. Release of Funds. The CPA Funds shall be released to Exchange Hall only upon the complete satisfaction of all of the following conditions:
 - a) A majority of the Board of Selectmen of the Town of Acton at a duly called meeting approves the PRA.
 - b) The PRA is fully executed by the Town and Exchange Hall and approved and executed by MHC, and a fully executed original of the PRA is delivered to Town Counsel for the Town to be held in escrow for recording in the Middlesex South Registry of Deeds (the "Registry") immediately prior to the release of the CPA Funds pursuant to escrow instructions mutually agreeable to the Town and Exchange Hall.
 - c) Pursuant to the 2008 Town Meeting Vote, Exchange Hall has received a certificate from the Town of Acton Historic District Commission (the "HDC") that the completed renovation work to the Premises meets the terms of the HDC's Certificate of Appropriateness relative to such work dated December 4, 2007.
 - d) Exchange Hall has provided to the Town the National Park Service certifications (Parts I, II and III) required by the 2008 Town Meeting Vote.
 - e) The Town has received a Consent and Subordination Agreement, in a form reasonably acceptable to the Town, executed by all mortgagees of the Premises, whereby such mortgagees consent to the grant of the PRA to the Town and to the recordation of the same in the Registry and agree to subordinate their mortgages to the PRA.
 - f) The Town shall have access to the Premises as provided in the 2008 Town Meeting Vote (except for any limitations on the use of the ballroom stage imposed by the AAB).
 - g) Exchange Hall shall have received from the Town of Acton Building Inspector a final inspection report that the construction of the LULA has been completed in accordance with the Massachusetts State Building Code. Additionally, the Premises shall be in compliance with any other applicable Town and other legal requirements necessary in order for the Town to have access to the Premises as provided in the 2008 Town Meeting Vote, and Exchange Hall shall have received (with a copy to be provided to the Town) final approval from the State Elevator Inspector with respect to the installation and operation of the LULA.
 - h) There shall be no liens or encumbrances on the Premises except for those liens

and encumbrances permitted by the PRA.

2. Amendment. This Agreement may only be amended by mutual agreement of the parties, in a written instrument.
3. Entire Agreement. This Agreement reflects the entire agreement between the parties. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this Agreement.
4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
5. Invalidity of Particular Provisions. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
6. Counterparts. This Agreement may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

[Signature Page Follows]

EXECUTED under seal as of the date first written above.

EXCHANGE HALL, LLC

By: _____
Glenn Berger, as duly authorized manager

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On this ____ day of _____, 2012, before me, the undersigned notary public, personally appeared Glenn Berger, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose as manager of Exchange Hall, LLC, a limited liability company.

Notary Public:

My Commission Expires:

APPROVAL AND ACCEPTANCE BY TOWN OF ACTON BOARD OF SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Acton, Commonwealth of Massachusetts, hereby certify that at a meeting duly held on _____, 2012, said Board voted to approve and accept the foregoing Agreement.

TOWN:

TOWN OF ACTON
BOARD OF SELECTMEN

Mike Gowing

Janet K. Adachi

Pamela Harting-Barrat

John Sonner

David Clough

AGREEMENT RELATIVE TO THE RELEASE OF
COMMUNITY PRESERVATION ACT (CPA) FUNDS

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WHEREAS, on April 7, 2008, Town Meeting approved the grant of the CPA Funds to Blue Bird subject to certain terms and conditions set forth in the 2008 Annual Town Meeting Warrant (the "2008 Town Meeting Vote"); and

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WHEREAS, as a condition to the grant of the CPA Funds, Exchange Hall and the Town have been negotiating the terms of a certain Preservation Restriction Agreement between the Town and Exchange Hall (the "PRA") to encumber the Premises; and

WHEREAS, the PRA has been submitted to the Massachusetts Historical Commission ("MHC") for its review and approval; and

WHEREAS, Exchange Hall has completed in all material respects the restoration work contemplated by such June 2, 2008 award letter from the CPC and the 2008 Town Meeting Vote, exclusive of the installation of an elevator to serve the Premises; and

WHEREAS, the Department of Public Safety of the Commonwealth of Massachusetts, through its Architectural Access Board (the "AAB"), has granted Exchange Hall a variance for the installation of limited use-limited application elevator ("LULA"), in lieu of a standard size elevator, as set forth in its decision dated June 4, 2012, a copy of which has been provided to the Town; and

WHEREAS, Exchange Hall and the Town wish to clearly set forth the terms under which the CPA Funds will be released to Exchange Hall.

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1. Release of Funds. The CPA Funds shall be released to Exchange Hall only upon the complete satisfaction of all of the following conditions:
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 - c) Pursuant to the 2008 Town Meeting Vote, Exchange Hall has received a certificate from the Town of Acton Historic District Commission (the "HDC") that the completed renovation work to the Premises meets the terms of the HDC's Certificate of Appropriateness relative to such work dated December 4, 2007.
 - d) Exchange Hall has provided to the Town the National Park Service certifications (Parts I, II and III) required by the 2008 Town Meeting Vote.
 - e) The Town has received a Consent and Subordination Agreement, in a form reasonably acceptable to the Town, executed by all mortgagees of the Premises, whereby such mortgagees consent to the grant of the PRA to the Town and to the recordation of the same in the Registry and agree to subordinate their mortgages to the PRA.
 - f) The Town shall have access to the Premises as provided in the 2008 Town Meeting Vote (except for any limitations on the use of the ballroom stage imposed by the AAB).
 - g) Exchange Hall shall have received from the Town of Acton Building Inspector a final inspection report that the construction of the LULA has been completed in accordance with the Massachusetts State Building Code. Additionally, the Premises shall be in compliance with any other applicable Town and other legal requirements necessary in order for the Town to have access to the Premises as provided in the 2008 Town Meeting Vote, and Exchange Hall shall have received (with a copy to be provided to the Town) final approval from the State Elevator Inspector with respect to the installation and operation of the LULA.
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and encumbrances permitted by the PRA.

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6. Counterparts. This Agreement may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

[Signature Page Follows]

EXECUTED under seal as of the date first written above.

EXCHANGE HALL, LLC

By: _____
Glenn Berger, as duly authorized manager

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On this ____ day of _____, 2012, before me, the undersigned notary public, personally appeared Glenn Berger, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose as manager of Exchange Hall, LLC, a limited liability company.

Notary Public:

My Commission Expires:

APPROVAL AND ACCEPTANCE BY TOWN OF ACTON BOARD OF SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Acton, Commonwealth of Massachusetts, hereby certify that at a meeting duly held on _____, 2012, said Board voted to approve and accept the foregoing Agreement.

TOWN:

TOWN OF ACTON
BOARD OF SELECTMEN

Mike Gowing

Janet K. Adachi

Pamela Harting-Barrat

John Sonner

David Clough